

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON**

**NEW LONDON TOBACCO MARKET,
INC., et al.**

Plaintiffs,

V.

**JAMES C. JUSTICE COMPANIES, INC.,
et al.**

Defendants.

Civil Action No. 6:17-cv-245-GFVT

Judge Gregory F. Van Tatenhove

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO
TEMPORARILY LIFT STAY AND
FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT**

Defendants, James C. Justice Companies, Inc., Kentucky Fuel Corporation, Justice Management Services, LLC, Justice Farms of North Carolina, LLC, Oakhurst Club, LLC, Southern Minerals, LLC, and James C. Justice, III, by counsel, and in response to the Motion of Plaintiffs, New London Tobacco Market, Inc., and Fivemile Energy, LLC, to Temporarily Lift Stay and for Leave to File Second Amended Complaint (the “Stay Motion”) [Doc. 40], respectfully state as follows:

Plaintiffs propose that the Court lift the stay of these proceedings imposed through an Order entered July 26, 2018 [Doc. 36] in order to allow Plaintiffs to file a Second Amended Complaint and to effectuate service of that Second Amended Complaint on the Defendants added in the proposed Second Amended Complaint, after which the stay would be reinstated. *See* Stay Motion, pp. 3-4. This proposal would initially appear to have some logic and to achieve Plaintiffs’ goal of protecting any applicable statutes of limitations without requiring any further actions by the Parties until the “companion” case is resolved.¹ However, what the Stay Motion

¹ *New London Tobacco Market, Inc., et al. v. Kentucky Fuel Corporation, et al.*, Civil Action No. 6:12-cv-91-GFVT-HAI (E.D. Ky.).

fails to acknowledge or account for is that Plaintiffs' proposal would result in four additional entities – Bluestone Industries, Inc., Dynamic Energy, Inc., JCJ Coal Group, LLC, Bluestone Resources, Inc. – and one additional individual – Governor James C. Justice, II – being of record as Defendants in a federal lawsuit. Even without the requirement of filing an Answer or other responsive pleading, these new Defendants could nevertheless be damaged; for example, if seeking financing or in potential purchase/sale agreements, one's status as a Defendant can have a detrimental effect.

Defendants submit that an alternative solution that will protect Plaintiffs but will not subject the new Defendants to the potential harm of holding the status of Defendant in federal litigation would be the entry by this Court of an Order tolling any applicable statutes of limitations as to the new claims Plaintiffs seek to assert against the existing Defendants and as to the claims Plaintiffs seek to assert against the new Defendants. Prior to filing this Response, counsel for Defendants provided the Response to counsel for Plaintiffs and suggested that the parties "tender an Agreed Order tolling any applicable statutes of limitations for so long as the matter remains stayed by the Court." *See* May 6, 2019 letter from Richard A. Getty, Esq. to John A. Lucas, Esq. and W. Edward Shipe, Esq., attached (without attachments) as ***Exhibit A***. Mr. Lucas responded that he would not have time to address the issue today: "I am snowed under today with multiple briefs, an expert report and conference calls. As a result, I will not have a chance to review or discuss this with my client or Scott. Go ahead and file your response and I will review it and either agree with you or let the court rule. I can probably take a look at it tonight, but can't promise that 100%." *See* May 6, 2019 e-mail from Mr. Lucas to Mr. Getty, attached as ***Exhibit B***.

Defendants therefore respectfully request that Plaintiffs' Stay Motion be denied in its entirety, and that the Court instead enter an Order tolling the applicable statutes of limitations until such time as the stay in this matter is lifted or the matter is otherwise resolved. A proposed Order is tendered herewith.

Respectfully submitted,

/s/ Richard A. Getty
RICHARD A. GETTY
DANIELLE HARLAN
and
MARCEL RADOMILE

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that Defendants' Response to Plaintiffs' Motion to Temporarily Lift Stay and for Leave to File Second Amended Complaint was served on the 6th day of May 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and Standing Order upon all parties in the electronic filing system in this case.

/s/ Richard A. Getty
COUNSEL FOR DEFENDANTS

dhbpld2172

EXHIBIT A

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May 6, 2019

John A. Lucas, Esq.
and
W. Edward Shipe, Esq.
Howard & Howard, P.C.
4820 Old Kingston Pike
Knoxville, Tennessee 37919

Re: New London Tobacco Market, et al. v. Kentucky Fuel Corporation, et al.,
Case No. 12-cv-91 (E.D. Ky.); New London Tobacco Market, et al. v.
James C. Justice Companies, et al., Case No. 17-cv-245 (E.D. Ky.)

Gentlemen:

We have prepared the attached Response to Plaintiffs' Motion for a temporary lift of the stay and to file a Second Amended Complaint for filing today. After further conversations with my clients about your Motion, I am authorized to propose that we tender an Agreed Order tolling any applicable statutes of limitations for so long as the matter remains stayed by the Court. This would alleviate your clients' concerns and avoid further Court intervention.

If you and your clients are amenable to this suggestion, please let me know at your earliest convenience. We will hold off on filing the Response this morning, but because it is due today we will plan to file around 3:00 p.m. if we have not heard from you.

Sincerely yours,



Richard A. Getty

THE GETTY LAW GROUP, PLLC

John A. Lucas, Esq.

May 6, 2019

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RAG/dh

Encls.

cc: Danielle Harlan, Esq.
Ms. Ann M. Stith
Scott M. Webster, Esq.

ragltr10876

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Plaintiffs propose that the Court lift the stay of these proceedings imposed through an Order entered July 26, 2018 [Doc. 36] in order to allow Plaintiffs to file a Second Amended Complaint and to effectuate service of that Second Amended Complaint on the Defendants added in the proposed Second Amended Complaint, after which the stay would be reinstated. See Stay Motion, pp. 3-4. This proposal would initially appear to have some logic and to achieve Plaintiffs' goal of protecting any applicable statutes of limitations without requiring any further actions by the Parties until the "companion" case is resolved.¹ However, what the Stay Motion

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Defendants submit that an alternative solution that will protect Plaintiffs but will not subject the new Defendants to the potential harm of holding the status of Defendant in federal litigation would be the entry by this Court of an Order tolling any applicable statutes of limitations as to the new claims Plaintiffs seek to assert against the existing Defendants and as to the claims Plaintiffs seek to assert against the new Defendants.²

Defendants therefore respectfully request that Plaintiffs' Stay Motion be denied in its entirety, and that the Court instead enter an Order tolling the applicable statutes of limitations until such time as the stay in this matter is lifted or the matter is otherwise resolved. A proposed Order is tendered herewith.

² Concurrent with filing this Response, Defendants will also reach out to Plaintiff's counsel to discuss whether the matter can be resolved among the Parties and without further Court involvement.

Respectfully submitted,

/s/ Richard A. Getty
RICHARD A. GETTY
DANIELLE HARLAN
and
MARCEL RADOMILE

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that Defendants' Response to Plaintiffs' Motion to Temporarily Lift Stay and for Leave to File Second Amended Complaint was served on the 6th day of May 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and Standing Order upon all parties in the electronic filing system in this case.

/s/ Richard A. Getty
COUNSEL FOR DEFENDANTS

dhbpld2172

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Judge Gregory F. Van Tatenhove

**ORDER ON PLAINTIFFS' MOTION
TO TEMPORARILY LIFT STAY
AND FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

This matter having come before the Court upon Plaintiffs' Motion to Temporarily Lift Stay and for Leave to File Second Amended Complaint, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs' Motion is DENIED; and
2. This matter will remain stayed pursuant to the July 26, 2018 Order [Doc. 36];
3. Any and all statutes of limitations that apply to the claims Plaintiffs sought to raise through their proposed Second Amended Complaint, including the new claims against the existing Defendants and the claims against the new Defendants named therein, shall be and hereby are TOLLED until such time as the stay is lifted or the matter is otherwise resolved.

Done this the ____ day of May 2019.

dhbpld2173

**UNITED STATES DISTRICT COURT
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1. Plaintiffs' Motion is DENIED; and
2. This matter will remain stayed pursuant to the July 26, 2018 Order [Doc. 36];
3. Any and all statutes of limitations that apply to the claims Plaintiffs sought to raise through their proposed Second Amended Complaint, including the new claims against the existing Defendants and the claims against the new Defendants named therein, shall be and hereby are TOLLED until such time as the stay is lifted or the matter is otherwise resolved.

Done this the ____ day of May 2019.

dhbpId2173